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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,975	02/27/2002	Brent S. Nelson	876P148	6913
26568	7590	04/22/2005	EXAMINER	
COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD SUITE 2850 200 WEST ADAMS STREET CHICAGO, IL 60606			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/083,975

Applicant(s)

NELSON, BRENT S.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9, 32, 33, 34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ota et al (5,222,615) in view of Leigner (5,092,474), Tobias et al (5,762,221) and Ogg (6,044,997), further in view of Sugiura (4,749,092), Ota (5,238,129), Brody (5,740,934), Hayashi (4,877,141), and Welker (3,923,178).

In regard to claim 1, Ota et al ('615) discloses a plastic container capable of hot filling comprising a bell portion, a body portion and a base portion wherein the bell portion includes a neck for passage of a hot filled food product and a shoulder portion between neck and body portion wherein the body portion is polygonal and "generally" rectangular (Fig. 3) and includes four (or more) panels wherein each of the panels is flexible and substantially flat, each panel section exhibiting flexibility to move between a bowed and a planer configuration in response to temperature changes. Ota et al ('615) discloses that the body section can have any polygonal shape; for example, square or rectangular. In regard to the flatness of the panel, note that claim 1 does not state the degree of flatness. Note, too, that Ota et al ('615) discloses that "preferably" each panel contains one or more reinforcing ribs (column 4, line 13 plus). Thus, although Ota et al preferably employs ribs, Ota et al clearly discloses they are not mandatory and thus the panels could be without ribs. Claim 1 now recites that there are means for isolating the

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panel sections from the bell and base portion to permit the panel sections to have sufficient flexibility to move between the bowed and planar configuration. Note that, as disclosed, applicant discloses that these are elevated ridges and the specification only states that the ridges "isolate" the panel section and allow the panel section to "act" as vacuum panels. Ota et al ('615) teaches ridges above and below the panels that isolate the panels and the panels do "act" as vacuum panels. Thus, Ota et al discloses this structure. See also Leigner ('474), who discloses elevated ridges with inflection lines between the ridges and the vacuum panels and Tobias et al ('221) and Ogg ('997) who disclose ridges isolating vacuum panels from the bell portion and base which ridges also function as label bumpers which is another function of the ridges disclosed by applicant. Thus, the art taken as a whole teaches it would have been obvious to employ the ridge structure for applicants' intended function, that it was obvious to employ flat vacuum panels and it would have been obvious to employ four (or more) panels. Sugiura ('092), Brody ('934) and Welker ('178) are relied on as further evidence of the conventionality of flat wall vacuum panels whereas Ota ('129) and Hayashi et al ('141) are relied on as further evidence of the conventionality of vacuum panels.

In summary, applicant has combined a series of conventional expedients, i.e., bell shape, flat panels, ridges, employed them for their well known and intended function and derive no new or unexpected result therefrom.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of De Groff et al ('146) who is applied for the reasons given in the Office action mailed July 15, 2004.

Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Groff et al ('146) in view of applicant's admission of the prior art, further in view of Visioli ('901) and Wright et al ('353) for the reasons given in the Office action mailed July 15, 2004. Note that in the last Office action, the reference to Hayashi et al on page 5, line 9 was a typographical error and should have read De Groff et al.

Claims 21-31 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 6-8 above, and further in view of applicant's admission of the prior art, Visioli and Wright who are applied for the reasons given above.

Applicants' remarks have been carefully reviewed and are, for the most part, moot in view of the new ground of rejection necessitated by applicant's amendment. In regard to the location of the adhesive layer, adhesive layers in laminates are notoriously conventional in the art and its use and placement between layers that would or would not require them, is seen to have been an obvious routine determination.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 6:30 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh  
April 14, 2005

*Steve Weinstein*  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER** 1761